Supreme Court of the United States

OCTOBER TERM, ~~1948~~ 1949

No. ~~484~~ 12

ARTHUR OSMAN, DAVID LIVINGSTON, JACK PALEY, et al.,

Appellants,

vs.

CHARLES T. DOUDS, individually and as Regional Director of the National Labor Relations Board.

MOTION FOR ORDER NOTING PROBABLE JURISDICTION AND SETTING CASE DOWN FOR ARGUMENT

NEUBURGER, SHAPIRO, RABINOWITZ & BOUDIN,
Attorneys for Appellants,
76 Beaver Street,
Borough of Manhattan,
New York City, N. Y.

Supreme Court of the United States

ARTHUR OSMAN, DAVID LIVINGSTON, JACK PALEY, et al., Appellants, vs. CHARLES T. DOUDS, individually and as Regional Director of the National Labor Relations Board.	No. 404 October Term, 1948

TO THE SUPREME COURT OF THE UNITED STATES:

Appellants hereby respectfully move this Court for an order noting probable jurisdiction in the above matter and setting this case down for argument on an appropriate date early in the October 1949 Term of this Court.

The grounds for this motion are as follows:

This is an appeal, pursuant to Section 2101 of the Act of June 25, 1948, from an order of a three-judge statutory court for the Southern District of New York denying a motion for a temporary injunction and dismissing the complaint herein. This action involves the constitutionality of the Labor Management Relations Act of 1947 (popularly known as the Taft-Hartley Law) and, particularly, Section 9(h) thereof.

This case was docketed in this Court on or about November 8, 1948. Case No. 336, *American Communications Association* v. *Douds*, which raised the same question of constitutionality on a slightly different record had been docketed shortly prior thereto. On November 8, 1948, the Court noted probable jurisdiction in the *American Communications Association* case, but took no action in this matter, presumably because the Court felt that argument in the one matter would be sufficient to decide the issues involved in both.

The *American Communications Association* case would, in the normal course, have been reached for argument on or about January 19, 1949. On the preceding day, the Court, on its own motion, postponed argument in that matter indefinitely. A few days later, the Court granted a writ of certiorari in Case No. 431, *United Steelworkers v. N. L. R. B.*, which similarly raised the question of constitutionality of the Taft-Hartley Act, but on a record completely different from the record in the *American Communications Association* case and in the instant case. Both the *American Communications Association* and the *United Steelworkers* cases were set down for argument during the session of the court beginning on March 14, 1949.

Shortly prior to that date, the Solicitor General made an application for postponement of argument in both cases. The appellants in both cases consented to the continuance and the matter was accordingly postponed to the session of the court beginning on April 18, 1949.

Prior to that date, the appellants in both the *American Communications Association* and the *Steelworkers* cases made a further application for a continuance, this time until the next term of the court in October, 1949.

Had the argument in the *American Communications Association* and *Steelworkers* cases proceeded, either in January, March or April, there would presumably have been a decision by this Court by the end of the current term. Such a decision would probably have resulted in an effective adjudication of the rights, not only of the appellants in those two cases, but of the appellants in the instant case. The two continuances, however, delayed such an adjudication for at least six months and perhaps longer.

The appellants herein did not consent to either the application made in March, nor the application made in April, nor was their consent asked. Had they been consulted, they would have opposed any delay. The continuances did result in substantial injury to appellants, as this case is of critical importance. That is generally true where basic constitutional issues are involved; it is par-

ticularly true in the instant case where the ability of the appellant union to represent its members satisfactorily and to carry on its function as a trade union has been severely impaired by the repeated delays brought about with the consent of, or on the motion of, persons who are not parties to the instant action and have no interest therein. Moreover, appellants are plaintiffs in another action now pending in the Southern District of New York, raising the same issue as that raised herein. Prosecution of that action is being held up pending the determination of this appeal by this Court.

Presumably, the Steelworkers and American Communications Association consented to or applied for the continuances for reasons of their own. But it seems most unjust that the appellants herein should suffer a delay in the adjudication of their rights because other parties failed to press their appeals.

It is now obviously too late to argue the case at this term of the Court. We do request, however, that the Court note probable jurisdiction now so that we will not be faced with the possibility of still further delay in the October 1949 Term. Appellants have requested from American Communications Association assurances that no further applications for continuance will be made, but have failed to receive any such assurance. The failure of American Communications Association and the Steelworkers to prosecute their appeals at this term gives rise to at least a reasonable inference that they may not be prepared to proceed in October any more than they were prepared to proceed in March or April.

The adequate protection of the rights of the appellants herein would seem to require that the Court act in noting jurisdiction before the contemplated recess on June 20th. Should American Communications Association and the Steelworkers request a further adjournment in October, or should the former decide that it does not wish to prosecute its appeal at all, still further delay will result (since a decision in the *Steelworkers* case may not settle the issues

raised in the instant matter), with further injury to these appellants. The Court could not then note jurisdiction in this case until October, and there would ensue a further delay of from six to eight weeks, for the printing of the record and the preparation of briefs, before argument.

It will be noted that appellants in the *American Communications Association* case and appellants herein are represented by the same counsel. It does not necessarily follow, of course, that the interests of appellants in both cases are identical and, as has been pointed out above, the appellants herein were most anxious to argue their appeal during the current term of the Court. The fact that the same counsel does represent appellants in both cases, however, will mean that should the Court note probable jurisdiction in the instant matter, and should American Communications Association, the Steelworkers, and the appellants herein, all be prepared to argue their cases in October, no additional time will be required for argument, because of the addition of this case to the other two. The appellant herein has no objection to a consolidation of this and the *American Communications Association* cases for purposes of argument and will not request the Court for any extended time by virtue of the fact that the two cases will be argued together.

Dated: New York, N. Y., May 25, 1949.

Respectfully submitted,

NEUBURGER, SHAPIRO, RABINOWITZ & BOUDIN,
By VICTOR RABINOWITZ,
Attorneys for Appellants.

Supreme Court of the United States

OCTOBER TERM, [redacted]

No. 12 of 1949

ARTHUR OSMAN, DAVID LIVINGSTON, JACK PALEY, et al.,
Appellants,

vs.

CHARLES T. DOUDS, Individually and as Regional Director of the National Labor Relations Board.

APPELLANTS' PETITION FOR REHEARING

Appellants respectfully request that this Court reconsider its decision filed herein on the 5th day of June, 1950, and grant appellants a rehearing in this case pursuant to Rule 33.

We shall not enter into an extensive discussion of the critical issues which are presented to the Court. Nor shall we at this point make any effort to set forth even briefly the reasons why we believe that the prevailing opinion of Mr. Chief Justice Vinson was in error. Those arguments were previously submitted to the Court in the petition for rehearing filed in *American Communications Association* v. *Douds*, No. 10, October Term, 1949, and which in part are adopted in the opinions of Justices Black, Frankfurter and Jackson filed in that case.

Without discussing the arguments in detail, it is sufficient to note here that this case, which is probably the most important civil liberties case to come before the Court in a generation, has been decided by a 4-4 vote of the Court, and that two of the Justices who participated in the final vote did not hear oral argument. The decision of the three-judge statutory court which was thereby affirmed was likewise sharply divided on the issues.

It needs no extensive citation of authority to establish the fact that this is a most unsatisfactory basis upon which to decide a case of such monumental importance. There are now pending in the lower federal courts and in the state courts literally scores of cases whose outcome would be influenced most decisively by a clear-cut decision of this Court on the constitutional issues involved. Many of those cases can never reach this Court, and still others can reach the Court only after years of litigation and much expenditure of funds, frequently by litigants who can ill afford it. While we recognize that, in the view of the Court, the issues here are close ones, and that in any event a division of the Court is inevitable, we submit that every possible effort ought to be made to secure a decision by a majority of the Court so that the issues raised herein may be disposed of.

Respectfully submitted,

VICTOR RABINOWITZ,
Attorney for Appellants, Arthur Osman, David Livingston, Jack Pale[illegible], et al.

LEONARD B. BOUDIN,
BELLE SELIGMAN,
of Counsel.

Certificate of Counsel

I, VICTOR RABINOWITZ, do hereby certify that I am attorney for the appellants herein, and that this petition for rehearing is presented in good faith and not for delay.

June 14, 1950.

VICTOR RABINOWITZ